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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-63

MATTHEWS COMPANY, et al.,

Petitioners,

v.

D. C. WILLIAMS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION TO CERTIORARI

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Opinions Below

The opinion of the Eighth Circuit is reported at 499 F.2d 819 and is reprinted in Appendix A of the Petition. The opinion of the District Court, which is not reported, is set forth in Appendix B of the Petition.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented

Whether the record supports the determination of the Eighth Circuit that the real estate developer of an all white subdivision in North Little Rock, Arkansas maintained a racially discriminatory sales policy?

Statutes Involved

The pertinent provisions of the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982, and the Civil Riqhts Act of 1968, 42 U.S.C. §§ 3602(b), 3604(a) and (b), are set forth in the Petition at pp. 3-4.

Statement of the Case

Respondent takes issue with petitioners' statement of facts material to the consideration of the question presented. The Eighth Circuit noted that the facts relating to the conduct of the Matthews Company, et al. "appear without substantial dispute in the record" and proceeded to set them forth, see Petition at p. A-4—A-8.

After the events in question, Mr. Williams filed a complaint against the Matthews Company and its principal officers on April 29, 1970 in the United States District Court for the Eastern District of Arkansas. Jurisdiction was asserted under 28 U.S.C. §§ 1343(3) & (4) and 42 U.S.C. § 3612 to enforce § 804 of the Civil Rights Act of 1968, 42 U.S.C. § 3604, and the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982. Mr. Williams sued individually and as class representative for other black persons similarly situated pursuant to Rule 23(b)(2), Fed. R. Civ. P. for declaratory and injunctive relief, damages and other relief.

On September 20, 1973, after a trial on the merits, the district court dismissed both the individual and class action. The district court opinion did not refer to nor apply the evidentiary standards set forth in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973). On June 20, 1974, the Eighth Circuit reversed:

> We think that racial discrimination by the defendants in their real estate operations is shown as a matter of fact and law. The defendant's policy of selling lots only to builders, which, under the circumstances, operated to exclude black persons from acquiring building lots in the real estate subdivision, does not afford any legal justification for defendants' conduct. Petition at pp. A-3—A-4.

Expressly applying the standards set forth in *McDonnell Douglas Corp.* v. *Green, supra*, the Eighth Circuit first determined that "undisputed evidence establishes a prima facie case of discrimination," Petition at A-11, and then examined whether the Company, et al., had carried the burden of demonstrating a "legitimate, nondiscriminatory reason for the plaintiff's rejection," Petition at A-13. Thereupon, the Eighth Circuit concluded that the policy of selling lots only to certain approved builders, all of them white, was racially discrimination not justified by business necessity in this case. Petition at A-13—A-14. However, the class action was held appropriately dismissed and no injunctive relief directed.

On September 18, 1974, Mr. Williams filed a separate petition for a writ of certiorari, No. 74-296, from the failure of the Eighth Circuit to direct that broad injunctive relief issue upon the finding of a sales policy of racial discrimination. The question presented in No. 74-296 is not addressed by the petition in No. 74-63 nor the instant brief in opposition.

ARGUMENT

The Court of Appeals unquestionably scrutinized the record in light of *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792 (1973) in reaching its decision. The Matthews Company, et al. seek review by this Court because the Eighth Circuit found compelling evidence of racial discrimination in the record where the district court had concluded there was none. The question presented clearly concerns the contents of the record and, therefore, is not one for which the writ is ordinarily granted. It is the practice of the Court that, "we do not grant a certiorari to review evidence and discuss specific facts," *United States* v. *Johnston,* 268 U.S. 220, 227 (1925). *Second,* the Matthews Company, et al. are simply mistaken that *McDonnell Douglas Corp.* v. *Green, supra,* bars Courts of Appeals from ever examining the underlying record in cases of racial discrimination. *Third,* there is no conflict with applicable decisions of this Court or with decisions of another Circuit. Indeed, the Seventh Circuit in *Clark* v. *Universal Builders,* 1 P.H. Inc. EOH ¶ 13,671 at 14,348-52 (decided July 26, 1974), without citing *Williams,* applied the evidentiary standards of *Green* in a § 1982 fair housing case. *Fourth,* the particular issue raised by the petition is of no general significance, but important only to the immediate parties involved. See *Layne & Bowler Corp.* v. *Western Wells Works,* 261 U.S. 387, 393 (1922); *Rice* v. *Sioux City Memorial Park,* 349 U.S. 70, 79 (1954).

CONCLUSION

For the above reasons, a writ of certiorari should be denied.

Respectfully submitted,

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